

November 4, 2021

Ms. Dianne Martin
Chairperson
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

Re: SEC Docket No. 2021-02 Investigation of Complaints Regarding Antrim Wind Energy Facility

Dear Chairperson Martin:

Lori Lerner and Lisa Linowes (“the Undersigned”) respectfully submit this response to the October 29 letter by Antrim Wind Energy LLC (“Antrim Wind”) attorney Barry Needleman.

Mr. Needleman’s letter brings to mind the famous quote from Shakespeare’s Hamlet: *“The lady [substitute gentleman] doth protest too much, methinks.”* (Act III, Scene II) The phrase has come to mean that one can insist so passionately about something not being true that people suspect the opposite of what one is saying. In his protest, Mr. Needleman misrepresents and confuses several simple facts before the Committee.

Complaint 1: Rulemaking Recommendation

Mr. Needleman complains that the Undersigned have tried to undermine the Subcommittee’s recommendation on Charge 1 (paragraph 77, bullet #3) by emphasizing the addition of the rulemaking paragraph (paragraph 78). He presents the narrative that paragraph 78 is outside the scope of Charge 1 and has no impact on the Subcommittee’s finding that Antrim Wind complied with the SEC rules. The problem for Mr. Needleman is that there is no evidence to support his fanciful characterization of the August 18, 2021 deliberations.

The August 18 transcript clearly shows that Mr. Eaton and Mr. Duclos regarded the Subcommittee’s bullet #3 as rulemaking. They argued 1) that the SEC rules did not define a compliance interval; 2) that it was not possible to derive a compliance interval from the ANSI Standard; and 3) that the Subcommittee lacked the rulemaking authority to support bullet #3.¹

In fact, Mr. Eaton required the rulemaking condition be added after listening to Ms. Berwick’s heartbreaking testimony of living with excessive turbine noise.² (See Exhibit A) Without the rulemaking recommendation, the Subcommittee did not have the votes needed to send the August 23 letter to the SEC.³ Consequently, without paragraph 78, the SEC would not have received any finding of compliance regarding Antrim Wind’s post-construction monitoring. Thus, it appears the rulemaking recommendation was a priority for the Subcommittee and not a secondary concern as Mr. Needleman would have us believe.

¹ See Transcript 2021-02. August 18, 2021 meeting at 4-5, 8 (Exhibit C attached)

² *Id.* at 8 (Mr. Eaton stating, “I will vote for these recommendations as long as that [rulemaking] caveat is in there because of the testimony of Ms. Berwick. So it should go to the full committee with that [rulemaking] caveat.”)

³ The Subcommittee voted 2-1 to send the letter to the SEC with the understanding that paragraph 78 would be added. There is no public record detailing the process by which paragraph 78 was drafted or adopted.

Further, if the Subcommittee's determination of compliance was based on Antrim Wind generally following the ANSI 12.9 Part 3 Standard for sound monitoring, the record shows that neither Mr. Eaton nor Mr. Duclos were persuaded that the ANSI Standard held primacy over the plain language of the SEC rules.⁴ Mr. Eaton and Mr. Duclos rejected bullet #3. In so doing, they weaken the basis for any finding that Antrim Wind complied with the rules.

Complaint 2: Prediction Model and Hourly Averaging

Antrim Wind has now confirmed that its preconstruction prediction model assumed one-hour averaging. The significance of this admission cannot be overstated as it calls into question the evidence the SEC relied on in Docket 2015-02 when it found that the turbines would not produce an unreasonable adverse effect on public health. Specifically, when Mr. O'Neal stated in sworn testimony that his predicted "worst-case sound levels will be less than 40 dBA at any residence," did he mean 40 dBA *averaged over an hour*?

In his most recent letter of October 29, Mr. Needleman forcefully objects to the Undersigned highlighting this issue. He accuses us of advancing an untimely deficiency complaint against the 2015-02 Antrim application. This is a red herring. Our concern is not about the application's completeness. Our concern centers on whether there was the potential omission of a material fact by Antrim Wind that obstructed the SEC's ability to make an informed finding on public health. To our knowledge, there is no place within the 2015-02 record where Mr. O'Neal describes his predicted maximum sound levels as hourly averages.

In his client's defense, Mr. Needleman correctly states that the SEC accepted the Antrim application as complete back in December 2015 and later found that Mr O'Neal's sound assessment was prepared in accordance with "professional standards and our administrative rules." However, these actions would still be appropriate even if details about hourly averaging were omitted from the record. For example, Site 301.14(f)(2)(a) and Site 301.18 make no reference to a one-hour compliance interval and since Site 301.18(c)(3) requires the prediction model to report "*worst case wind turbine sound emissions*," it was entirely reasonable for the SEC to believe the maximum values Mr. O'Neal reported were not averaged. Mr. O'Neal gave the Committee no apparent reason to believe otherwise. The transcript from the Docket 2015-02 deliberations appears to bear this out.⁵

Given the vigor with which the prediction model was challenged, had Mr. O'Neal testified that his maximum sound levels were based on hourly averaging, the SEC and the intervenors obviously would have demanded to know the maximum *non-averaged* sound levels at neighboring properties. Recent sound monitoring at the Berwick property indicates that non-averaged turbine sound levels are reaching peaks that are over 50 dBA.⁶

We can see from 2015-02 transcript excerpts that the SEC members were already concerned that Mr. O'Neal's predictions were close to the 40 dBA limit and that turbine curtailments might be needed to bring the site into compliance. (*See* Exhibit B attached at 2. Clifford stating "-- *first of all, they're at 38.5[dBA]. Assuming the 1.5, they're off by 1.5 and it's over at 41.5[dBA], and they can't tamp it down, then those turbines or that particular turbine doesn't run, doesn't turn.*")

⁴ Transcript 2021-02. August 18, 2021 meeting at 4-5, 8 (Exhibit C attached)

⁵ Transcript 2015-02, Day 2 Morning Session. December 9, 2016 at 75-107 *Also See* Exhibit B attached. https://www.nhsec.nh.gov/projects/2015-02/transcripts/2015-02_2016-12-09_transcript_delib_day2_am.pdf

⁶ Rand Acoustics LLC Letter. July 29, 2021. https://www.nhsec.nh.gov/projects/2021-02/public_comments/2021-02_2021-07-29_rand_complianc_assessment.pdf

We will not speculate about what the SEC might have decided had they understood that averaged turbine sound levels could result in peak levels that are well over 40 dBA at neighboring homes. But we believe the SEC did not have the information needed to consider this fact. Fast forward to today, if the current SEC adopts the Subcommittee's bullet #3 it would be condoning hourly averaging at the Antrim facility *without any hearing* — past or present — that examines the full impact of an hourly standard on the Berwicks and others.⁷

Complaint 3: Public Input

Finally, Mr. Needleman complains, again, about the Undersigned's request for a more open and public process that encourages fact-finding. We have no interest in dragging out this enforcement proceeding. On the contrary, we believe that a more open process would greatly facilitate a conclusion.

We recognize that the issues raised in this docket are complex. The SEC and its Subcommittee members have conceded that the science surrounding turbine noise emissions is new and challenging. It has been a challenge for us, as well, to find ways to present the issues so they can be easily understood. We have waited patiently for nearly two years for the opportunity to discuss substantive flaws in Antrim Wind's monitoring study. However, given the extraordinary constraints on the public's ability to be heard, many of these issues have not been addressed at all. If there is to be any trust in this process and in the SEC in general, the public needs to believe that the Committee's priority is to get the facts and arrive at an open, informed and honest resolution. While we might understand Antrim Wind's desire to silence knowledgeable voices, it is stunning to see the SEC and its Subcommittee work to do the same.

Conclusion

Mr. Needleman's demand that this inquiry come to an end is premature. A serious question has been raised regarding Antrim Wind's testimony in the Docket 2015-02 and whether Mr. O'Neal omitted critical information about the protocol used to determine the maximum noise levels at neighboring properties. Ending this inquiry now with the adoption of bullet #3 would leave open the question of whether the SEC's initial finding of no unreasonable adverse effect on human health was ever valid.

In closing, we wish to stress that it is essential for the SEC to fully understand the real-world consequences of the Subcommittee's bullet #3 if adopted. Bullet #3 represents a significant departure from the turbine noise conditions imposed in prior SEC wind dockets. The SEC has repeatedly rejected long-term averaging over concerns that neighbors could experience peak sound levels that exceed the sound limits. The Subcommittee's bullet #3 would gut any noise protection intended under Site 301.14(f)(2)(a). It would also end the need for further work by the 2021-02 Subcommittee since every sound test would show compliance. From a public health perspective, adoption of bullet #3 would condemn the Berwicks and their neighbors to a lifetime of dominating turbine noise that disturbs their everyday activities, frightens their children, and makes it generally impossible for them to sleep with windows open. Approval would also preclude the Berwicks and others from seeking relief from the very Committee that permitted the Antrim facility.

⁷ Paragraph 71 of the Subcommittee's August 23 letter states that the SEC in Docket 2015-02 found Antrim Wind's preconstruction background study and prediction model were "prepared in accordance with professional standards and our administrative rules." From this the Subcommittee concludes "[t]he Committee has thus determined a one-hour LAeq can therefore demonstrate compliance." This conclusion is not supported by the rulemaking record. It is an engineered conclusion solely predicated on the Subcommittee's desire to compel consistency between the SEC rules and the ANSI standard and should be removed.

We respectfully ask that you agree with Mr. Eaton and Mr. Duclos and reject bullet #3. We also ask that you open this process up for a more thorough examination of the facts, including an investigation into the possible material omission of facts in the 2015-02 docket.

Thank you for the opportunity to be heard. If you have any questions, please do not hesitate to contact us.

Sincerely,

Lori Lerner
Bridgewater, NH

Lisa Linowes
Lyman, NH

Attachments

cc: Docket 2021-02 Service List

EXHIBIT A
SEC Docket No. 2021-02
Investigation of Complaints Regarding Antrim Wind Energy Facility

Unofficial transcript of Barbara Berwick's oral comments
August 18, 2021

During the Antrim Wind Energy meeting, and I would hope that you would have gone through the original meetings. Repeatedly members of the committee commented on how assured they were by the protocols that were put in place to protect the members of the public that would be impacted by the windmills.

These protocols would protect us. [7:20?]

Any fool?

I'm sorry, any fool would know that there is no way to replicate sounds days later, but members of the committee were assured that this could be done.

How? Well, the experts from Antrim Wind Energy assured that this could be done.

The obvious truth is that there is still no way to do this.

So the very idea that the exact same conditions will exist at a certain time, on a certain day is absurd and always has been, yet this was assured to the committee, so even before we talk about the testing protocols, it might be good to realize that the only way that you can really protect US people is to provide constant monitoring, especially since there is nothing that we can do that would be accepted by Antrim Wind Energy.[8:11]

Our phones are sophisticated pieces of equipment, but we are not allowed to use them to document anything or to prove anything.

So one point that was frequently discussed during the hearings was the method of monitoring and during the hearings, Ms Linowes definitely mentioned the standards that were used.

She definitely mentioned the time frequency.

Never once was she challenged by anyone.

In fact, there was a there was a general agreement.

Yes, this is how it would be done, yet now Ms Linowes is being said that she doesn't know that she, who was part of the actual committee that helped create the rules to protect the public from the sound knows nothing. Mr Rand, an acoustician, I know I'm saying that wrong, knows nothing.

Others, better experts know nothing.

Very interesting tidbit is during those hearings there was also this concern about wells, about blasting and that was done in the integrity of our well.

During that time, we were basically assured that, wells that were close by, within 1/2 mile would be tested. [~9:28]. I know that I and every member of that committee and every member that was on our side, we felt assured that my well would be tested. Low and behold, it was never tested.

Somehow it was just outside of those parameters.

They knew it all along, but they led deception, deliberate deception.

There's always been so much deception and the whole SEC, see here and I felt was deception from the very beginning that it was already decided.

There were some particular remarks that were made.

[~9:59] Mr. Robertson, our selectman, made a remark when I asked him if he would ever consider putting the turbines downtown, he said no. When I questioned why, he stated that it would affect too many people.

So this answer told me that sacrificing our family was acceptable, and I guess that that's how the SEC sees things too, that there are definitely families that could become sacrifice without any compensation, without any regard.

[10:26] The second comment that was made that stays with me was one that Mr. Clifford made during deliberations. He commented that when you move next to a pig farm, you can't complain about the odor. He was actually using this to say that we, the homeowners, don't have any right to complain about not wanting any of the effects of the turbines, but we didn't move next to the turbines.

We've been there for years, they moved next to us.

I realize that that doesn't actually relate to today's decision, but I want you to understand the long, the long disrespect that we have felt as homeowners.

How has the windmills affected us directly?

We never sleep with our windows open.

Never, never. I always shut them before going to bed.

If they're open at all, because we cannot sleep.

I live in one of the most rural areas in Antrim.

We have a road that is a dirt road that most people wouldn't even be willing to live on, but I cannot open my bedroom window at night.

Some nights working at the table in my dining room, the noise just drums into my head.

There's no way to escape it.

Other times, it's perfect.

I'm not going to stand here and say my windows rattled. My windows have never rattled and I'm not going to say it's miserable all the time.

It is not miserable all the time, but when it is miserable, it is really miserable and there's no way to escape it.

[11:57] So today, you are here to decide if you will follow the rules as they were written and intended, or if the industry standards are good enough and isn't that what the committee really meant all along.

I have no hope really that you will do what is right.

I've long ago given up that idea.

I have no hope that you even care about the effects from the abutters.

I'm quite sure that in your eyes your job is to approve any energy project.

Let the people talk and then just approve the projects.

Still, here I am.

[12:29] I think I am the definition of insanity to continue to do the same thing and expect a different result.

I don't know why I did.

Where are the complaints?

I haven't filed any complaints.

Why not?

I've been asked that, but I did file complaints.

I was asked to document.

I was asked to keep records. I sent in records.

I sent him screenshots of my phone.

Nothing ever happened.

How long are we supposed to do that and why should we continue to complain?

If you want, you can call the Antrim Police Department asking about a report from a Mr. Ivey who lives down the road, who called to complain about the sound.

People have no respect for this committee and don't think that anything will happen.

No other time involved.

My neighbors next door, they have three young children. The wife spent over three or four hours on the phone, listening to one committee meeting in order to try and give her testimony.

We have lives. We're not getting paid for being here. We have a lot of living that we have to do and we can't take the time to be constantly coming here.

We will all gladly put in our complaints of when the sound is really bad, if we feel like there's going to be follow through.

[13:53] But if the follow through is like the testing that was done, a 15 day sound assessment that eliminated all but two hours of time, or all but one hour of time, then it's just a farce, so I'm asking you to do the right thing.

I'm asking you to really care about the people that are affected.

Not just for us, but for other windmill projects that are going in.

It does affect people's lives. We did go from a beautiful, peaceful place to a place that is no longer like that for us.

[14:17] It has affected our life and it continues to affect our life and I ask, that you not allow Antrim wind energy to control the SEC.

Did you have any?

Sorry, do you have any questions?

Evans: I didn't, I didn't, do either of the two of you.

Duclos: I have no follow up questions.

[14:44] Eaton: Yes, curious. In a line of sight, how far is your home from the closest one?

Berwick: Closest one is half a mile away, but we have three that we can visibly see.

Eaton: And you state rural, I grew up in Stoddard, next door.

Berwick: Right, it's a beautiful rural area. Yeah, acres and acres behind us with absolutely nothing but...

Evans: Alright, thank you.

[15:10]

EXHIBIT B

SELECTED EXCERPTS

TRANSCRIPT SEC 2015-02, Day 2 Morning Session ONLY. December 9, 2016

https://www.nhsec.nh.gov/projects/2015-02/transcripts/2015-02_2016-12-09_transcript_delib_day2_am.pdf

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Mr. CLIFFORD: the Applicant had certified as well as Mr. O'Neal that if they did the postcompliance testing postconstruction and they didn't comply, there were efforts that they could take to be in compliance, and the sound decibel levels, I think the highest measured was 38.5 which was underneath our threshold of 40 during the day. Clearly, less than the 45 I think we talked about at night. That there were methods they could take to either, A, feather the blades or that the Siemens documentation

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MR. CLIFFORD: But at the end of the day, Mr. O'Neal stated that they were confident that they could easily meet their standards under the 301.14 and they didn't think that there were any temperature gradients or wind shear or atmospheric conditions particular to Antrim that were going to cause the sound to be any higher than the predicted.

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MS. WEATHERSBY: I guess my concern then could probably be addressed by the postconstruction monitoring just to be sure that the levels at the Berwicks and the other residences are within the 40 to 45 decibels. It almost doesn't, it does, of course, matter for the accuracy of the study, but the real point is that after construction the people aren't experiencing it, the noise from the turbines, more than 40 or 45. So I think that can probably be satisfied with the postconstruction monitoring.

PRESIDING OFFICER SCOTT: I would add to the extent that we, if we get there, we end up in a position where we're taking solace in the postconstruction sound monitoring or the noise reduction, NRO mode, it's important to me that we be as diligent as we can in ensuring that those processes are appropriate. For instance, we've heard, well, if this happens, they'll just go to NRO mode. Okay. Well, how do you know the NRO did what it's supposed to do, right? So there's, I struggle with how do we ensure compliance. So I think some of the sense of what I'm getting is, okay, we have rules, so that's a good thing. We don't have to reestablish as a Committee what we think the right sound levels are to the extent that we feel the Mr. O'Neal's process was sufficient, but we're going to take solace with, okay, but then there's going to be monitoring. I just want to make sure if we get to a place if we're going to go that way we're comfortable that monitoring is sufficient, and that's certainly been raised by others, and I think it's evidenced by the Berwicks' concerns about what they saw for monitoring going on. I don't know if that's helpful or not.

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MR. CLIFFORD: Because the thought was that or the recollection was well, you hear it at night and then you come back during the day and you have to try to replicate, well, what was the wind last night, how strong were the turbines were at full power, half power, what was going on. So I know it was discussed in that context. But also that there was discussion by the Applicant and Mr. O'Neal about Siemens was going to guarantee the sound levels as well because there was, in other words, we have a sound limit in place in New Hampshire, and if the Siemens turbines cannot deliver, even with the mitigation efforts, they'd have to shut down. And so the recourse of the Applicant would probably be to go back to Siemens and say, you know, we got handed a bill of goods here because if they exceed, if they can't mitigate it -- first of all, they're at 38.5. Assuming the 1.5, they're off by 1.5 and it's over at 41.5, and they can't tamp it down, then those turbines or that particular turbine doesn't run, doesn't turn, and so that's kind of, that's the Applicant's risk that they're taking by turning to Siemens, and I assume Siemens would come out with a sound measuring device and they'd hire a sound measuring guy and they'd figure out how to get it in compliance or it would be another big lawsuit.

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MR. CLIFFORD: Mr. O'Neal's testimony was that the G factor was .5, porous or hard, and they used a two-decibel uncertainty from the turbines. That was from the manufacturer. And that he agreed that even if you modeled a G of zero versus one the difference might be anywhere from 3 to 6 dB, and he thought that given Antrim had generally mixed ground cover he thought a .5 was accurate.

So I take that to read in many respects that he probably used his best scientific judgment consistent with his prior research in this area, felt that was appropriate, modeled it that way and even with the uncertainty factor there's still this potential to turn it down another five decibels if he's horribly off. And, again, the discussion centered around our statute or rules require you can't operate it if it's over 40.

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PRESIDING OFFICER SCOTT: Okay. And just to clarify, I know you were paraphrasing, but if we're registering above 40 but below 45 that would allow them to operate during those 8 hours during the day, according to our rules.

MR. CLIFFORD: Right. According to our rules. I'm sorry. I'm really speaking to the 40 at night. That's what I wanted to be clear on. It's the night. When I refer to 40, it's to that.

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MS. WEATHERSBY: I think the rule is it's greater of 40 or 45 or 5 above the background level. So if you were right down at the Route 9, got a ton of traffic and that you may get above 45, but for most of the Town of Antrim it seems like, and I think we heard testimony from Mr. James, that the sound levels are really pretty low, in the teens, typically, at night. So I think the 40 or the 45 would be the maximum threshold in most of the town.

EXHIBIT C

Partial transcript of the 2021-02 Subcommittee August 18,
2021 public meeting

**2021-02-2021-08-18-subcommittee-meeting-recording-part-
1.mp3**

00:00:00 - 02:00:05

01:49:22 J EVANS

We had, we had talked about whether or not to you know if there were any additional questions of the subcommittee just in general of any speakers. Or and or allow the facility, you know, I guess. What was your thoughts on how to how to.

01:49:40 JM TURNER

The committee has, the subcommittee has any other questions they can ask it now to whoever they want to. That would be my suggestion to you, but the subcommittee can do, You can do however you want.

01:49:53 J EVANS

I don't. I don't have any other additional questions for anybody that I have thought up since asking the other questions. Do either of you?

01:50:07 J DUCLOS

No, I think it's covered with the individuals or collectively.

01:50:08 J EVANS

OK. All right, so the next kind of piece on the agenda would be our discussion on the draft recommendations. I'm not sure if anybody else had anything to add. I mean we have all, kind of you know, obviously spent some time looking at these and whatnot and so I don't necessarily have anything else to add other than that I think we may want to consider providing the full SEC with a with an actual recommendation of the, if we do choose to go with these, with the recommendations that are the draft recommendation, I think we should consider adding what the compliance interval should be. I think if we were to just send it over as is, I know it's not necessarily directly indicated in our charge that we have to provide them with a recommendation of what the compliance interval will be, but I think if we send it over without one then, I think they would still struggle with 'OK, so what do we do with this from here?' We've spent quite a bit of time researching this and going through this, and I think it would, you know, in the interest of time and making things.

Uhm, you know? Obviously there's been a lot of comments that this is taking a long time, and I think if we don't send it over with a compliance interval, then I think it's only going to slow things down at the subcommittee's end that they may need another subcommittee to figure out what that that compliance interval is, or whatnot.

So I think we should send it over with a compliance interval.

That's my opinion. I don't know if anybody else has any additional thoughts.

01:51:50 T EATON

What does John Mark think?

01:52:25 JM TURNER

Well, I mean, this subcommittee certainly has the, you know, can send whatever recommendation you decide, you know to do, but I would think that you're constituted under a certain order to consider things under certain charges and you need to limit yourself to the charge. That would be my advice.

01:53:00 J DUCLOS

Hopefully you can get that deep sigh on the record. I've read what has been submitted and I've spent a fair amount of time on this and I reread our charge. The Charge does not request the recommendation. Our charge did not and cannot establish a rule. That can only be done by the full committee. And I think, on our recommendation #3, we're dangerously close to making a rule that we haven't been charged to do or have the authority to do, so I have a problem with that. For between, you know, the public that has to deal with the noise, and looking at a .125 LAeq. The rule does not say that. The facility, Antrim Wind, has been using a one-hour that they thought was

reasonable. They talked 10-minutes and then I think Miss Linowes brought this up in her statement when she was not agreeing with our third recommendation is because the five minute, I guess is Accelerated standard to set of background noise where noise is somewhat constant is my understanding. But I could spend some more time I think Looking at the ANSI standard before that and reading it myself and try to analyze that. It's not really, setting, as she points out, an LAeq T. And that T can be anything, right? It could be an hour or 10 minutes. It could be a year, whatever the case may be, and it's not up to this subcommittee to establish what that T is. Other than looking at the rule, the plain language of the rule, and anything else that we have at our disposal that seems to make sense for what that compliance standard should be, I just sit here and I say, well, I can't, I can't do that. I think that we set a standard it should be rulemaking. If we recommend a standard, it should also be done under the auspices of rulemaking because the public has a right to define a rule. And I don't think we're going to afford them the opportunity to do that. I also feel if we even make a recommendation, it's not going to be something that's going to be accepted by all. You know we're still going to get into the "tastes great less filling," right? The fact is, what comes to my mind is that the committee that issued the certificate of site and facility issued it on the basis of

health and safety and a standard that could be met by the facility. Otherwise they would have denied the permit. I mean, that's where I stand. They said, why even bother trying to set a standard that's too stringent if they can't meet it. You'd say "Don't build it, right? You don't meet the health and safety standards." But they allowed it to be built. So what that standard is, I can't tell you what it is. I don't know. They're the ones that made the rule. They're the ones that took the testimony. I think they're the ones that have to come up with a new rule to clarify what the compliance standard is. I mean, that's just one opinion on this committee. But that's pretty much my opinion. I would say on the third bullet that we have to seriously rewrite that and identify the problem but not make the recommendation.

<Discussion from Dr. Fred Ward>

01:57:31 T EATON

I have to agree very much with John. I have a hard time figuring out what the standards are also and to send that over with our recommendation would be tough for me.

01:57:50 J DUCLOS

They could turn around, obviously and charge us to do something if they want. Because, you know, seriously, we put a lot of time into this. But a lot more time, I think, would have to be put into setting a compliance recommendation, you know,

and there's a lot of background data and information of how we got to that standard I think we'd have to be deliberating as well. Short of that I would be hard pressed, like Mr. Eaton, to make that third bullet recommendation.

01:58:25 J EVANS

So you want, would you prefer to strike that?

01:58:33 J DUCLOS

No, I would say that we reached the conclusion that there is a LAeq T issue. T is undeterminable by this committee and we recommend let it go to the full committee to identify or do a rule change. They're the only ones that can make rules. You know. The subcommittee cannot make a rule. And we're not charged with making a rule, we're charged with figuring what the existing rule says, and I think that's undeterminable based on our deliberations and our public comments, everything that I've come down to, at least in my mind.

01:59:29 J EVANS

OK. That makes sense. Do you have any questions John Mark?

01:59:36 JM TURNER

No, it's up to the subcommittee to decide how they want to proceed. You know, taking a motion about adopting certain parts of this, or not adopting certain parts of this, or maybe scheduling another public meeting to discuss how to handle this or ...But you need to make a decision about what you want to do

because that was agenda and you don't, I mean, you don't have to. You can make a decision to postpone it and do something else.

<SUBCOMMITTEE ADJOURNS BRIEFLY TO CONFER WITH COUNSEL>

Audio file

[2021-02-2021-08-18-subcommittee-meeting-recording-part-2
1.mp3](#)

Transcript

00:00:10 J EVANS

All right, I apologize. That took a little bit longer, but we just needed to have a brief consultation with counsel just to figure out what we need to be doing and make sure that everything is correct. So I think what we would like to do now is kind of basically what we're considering is whether or not to adopt the committee's recommendation. Uh, I think an acknowledgement of the fact that there have been quite a bit of concerns over the noise and how disruptive it is and what not. I think it may not be the, it may be advisable to add into this recommendation a recommendation to the full SEC to consider a rulemaking adjustment which would, which could even involve, you know modification to the limits as they are, you know, addressing the time issue and whatnot. And so I don't know if

anybody else has thoughts on what exactly how we want to make, if we want to make a change to these recommendations and what that would involve. That's my thought process at this point. I don't know if either the two of you have anything to add to that.

00:01:50 T EATON

Mr. Chair, I agree with what you just said and I will vote for these recommendations as long as that caveat is in there because of the testimony of Ms. Berwick. So it should go to the full committee with that caveat.

00:02:15 J EVANS

Do you have anything you would like to add John?

00:02:24 J DUCLOS

<Laughter> I'm postulating. Well, the committee is charged with determining what the rule says. And the plain language of the rule doesn't have a time standard set to it. I think that's pretty clear in my mind. There is a requirement that we follow ANSI standards. And I think we're making a leap that, since, in our charge for recommendation three for sound emissions shall be measured using LAEQ over a time period that's at least five minutes, I think that's a little bit of a leap for this committee. Seeing the full SEC change the ANSI standards once

they deliberate on it. And I'm somewhat perplexed between moving forward with some standard, you know, of recommendation from this subcommittee as a compliance standard that we've recommended for the full committee to approve, deliberate on, or change the rule versus giving them no recommendation whatsoever and not having a compliance standard that could be enforced at some point, in the interim before another rulemaking to establish a clear and present time period would be established. So that's kind of where I am. Do I throw it back to the full committee and how long that would take? Or do we say our best recommendation is the five minute time period, because we could surmise that from an ANSI standard. I've been a regulator for 42 years in the hazardous waste program and I enforce rules and I write rules that are clearly written. That we know what they say and the public knows what they say and the facility knows what they say and we enforce those. It's hard to enforce a rule based on, to me, on a summation of what the ANSI standard would apply for a compliance period. I just find that unfair and unreasonable to all parties. And I would recommend that we don't make a recommendation on time period, but put it back to the full committee for Rulemaking, and also say that either they recharge us with another mission and force us to come up with a time period. And that's when I would feel comfortable with making a recommendation. Short of that, I'll vote for bullet

one, bullet two and a change of bullet three to say that it's unclear as to what that time period is and would recommend that it be sent to the full committee for further consideration.

00:05:42 J EVANS

To be clear. The bullets you're talking about are on page 23 of the draft recommendation. It's the third bullet. Correct?

00:05:54 J DUCLOS

Yes, paragraph 77 Bullet 3.

00:06:03 T EATON

To me if we sent it on to the full committee with this recommendation, the full committee is going to take a good look at that and also hear testimony such as we've just heard, and they can make their decision as a full committee as to whether that should be taken out or not.

00:06:14 J EVANS

I think it would be beneficial to provide at least our interpretation of what the ANSI standard says to the full committee just because they're going to be trying to do the same thing and having an understanding of what our thought process is here would be helpful to them, I think anyway, so in my opinion, I would prefer to, I think it should be, we should include it as

it is with that and then again add the caveat that they may want to consider a rule change.

00:06:56 T EATON

Again, how would that caveat be said again?

00:07:02 J EVANS

I think maybe we can work work work on the wordsmithing, of that, but I think it would basically say you know that may it may involve reconsidering not only the timeframe, but then possibly the standard, is it too high? Is it too high or too low or whatnot? Just that they need to, acknowledge that, you know, it would help acknowledge the fact that there are concerns, concerns of the public. Of the public and their health, either the health and safety or the, and I don't want to begin to interpret, you know some of the things that go into when they're doing the application for site and facility I, I think some of those you know, some of those determinations are made during that process as to what's you know what's considered a health risk versus just an annoyance or something like that?

00:08:04 T EATON

It would be up to the whole committee to possibly hire the expert to check the noises, it they wanted to.

00:08:17 J EVANS

I think that, well, that would be more of our, I think we're talking, you're talking the charge two more, right? I mean, we shouldn't, that we still have the subcommittee, still is tasked with doing that. We still have to investigate the noise complaints, but I think without getting an indication of what the full SEC thinks and whether or not they agree with our recommendations or not, it's going to be very important for us to move forward with charges two and three.

Did you have any questions John Mark?

00:08:53 JM TURNER

No, except that you should proceed to a motion and gets you a second. You guys vote on what you want to recommend. Any changes you want to make and let's have a vote on it.

00:09:10 J EVANS

I guess I don't always want to be the one to do the first motion, but. I I'll, I'll do my best but I would like to motion to adopt this recommendation, but add in maybe say a fourth bullet to that page 23 that kind of also includes a recommendation to the to consider whether or not the full SEC feels it would be appropriate to do a rulemaking which would reconsider the noise levels, the time frame and whatnot just to

provide complete clarity and hopefully get it such that it's addressed the needs of the facility as well as the public.

00:10:00 T EATON

I would second that

00:10:05 J EVANS

So, um, with that my vote would be yes on that motion.

00:10:15 J DUCLOS

John Duclos votes no.

00:10:17 T EATON

Tom Eaton vote yes.

00:10:20 J EVANS

So with that the motion is passed with a vote of two yeas and one nay.